

Jun 03, 2025

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHELLE C.,

Plaintiff,

v.

FRANK BISIGNANO,
COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

No. 1:24-CV-03150-ACE

ORDER GRANTING DEFENDANT'S
MOTION

ECF Nos. 12, 17

BEFORE THE COURT is Plaintiff's Opening Brief, Defendant's Brief in response, and Plaintiff's reply. ECF No. 12, 17, 18. Attorney Matthew Robert McGarry represents Plaintiff; Special Assistant United States Attorney John Drenning represents Defendant. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Defendant's Motion and **DENIES** Plaintiff's Motion.

JURISDICTION

Plaintiff filed applications for Supplemental Security Income and Disability Insurance Benefits in May 2020, alleging onset of disability on May 6, 2020. Tr.

¹Pursuant to Federal Rule of Civil Procedure 25(d), Frank Bisignano, Commissioner of Social Security, is substituted as the named Defendant.

262, 268, 278. The applications were denied initially and upon reconsideration. Administrative Law Judge (ALJ) Laura Valente held a hearing on October 25, 2022, Tr. 65-91, and issued an unfavorable decision on November 10, 2022, Tr. 18-42. The Appeals Council denied Plaintiff's request for review on July 25, 2024, Tr. 2-7, making the ALJ's decision the Commissioner's final decision for purposes of judicial review, which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on September 27, 2024. ECF No. 1.

STANDARD OF REVIEW

The ALJ is tasked with "determining credibility, resolving conflicts in medical testimony, and resolving ambiguities." *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence "is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971), quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938). If the evidence is susceptible to more than one rational interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1098; *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be set aside if the proper legal standards were not applied in weighing the evidence and

1 making the decision. *Browner v. Sec’y of Health and Human Servs.*, 839 F.2d 432,
2 433 (9th Cir. 1988).

3 SEQUENTIAL EVALUATION PROCESS

4 The Commissioner has established a five-step sequential evaluation process
5 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
6 416.920(a); *Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through
7 four, the claimant bears the burden of establishing a prima facie case of disability
8 benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a claimant
9 establishes that a physical or mental impairment prevents the claimant from
10 engaging in past relevant work. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If a
11 claimant cannot perform past relevant work, the ALJ proceeds to step five, and the
12 burden shifts to the Commissioner to show (1) that Plaintiff can perform other
13 substantial gainful activity and (2) that a significant number of jobs exist in the
14 national economy which Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496,
15 1497-1498 (9th Cir. 1984); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012). If
16 a claimant cannot make an adjustment to other work, the claimant will be found
17 disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

18 ADMINISTRATIVE FINDINGS

19 On November 10, 2022, the ALJ issued a decision finding Plaintiff was not
20 disabled as defined in the Social Security Act. Tr. 18-42.

21 At step one, the ALJ found Plaintiff, who met the insured status
22 requirements of the Social Security Act through September 30, 2015, had not
23 engaged in substantial gainful activity since the alleged onset date, May 6, 2020.
24 Tr. 20-21.

25 At step two, the ALJ determined Plaintiff had the following severe
26 impairments: back strain, fibromyalgia, depressive disorder, post-traumatic stress
27 disorder (“PTSD”), anxiety disorder, personality disorder, and substance abuse
28 disorders. Tr. 21.

1 At step three, the ALJ found Plaintiff did not have an impairment or
2 combination of impairments that met or medically equaled the severity of one of
3 the listed impairments. Tr. 22.

4 The ALJ assessed Plaintiff's Residual Functional Capacity ("RFC") and
5 found Plaintiff could perform medium exertion level work, with the following
6 limitations:

7 [Plaintiff] can sit, stand, and walk for up to six hours each in an 8-
8 hour day. She can occasionally climb ladders, ropes, and scaffolds.
9 She can frequently climb ramps and stairs, balance, and stoop. **She is**
10 **capable of simple, routine tasks.** She can work superficially and
11 occasionally with [the] general public, and she can work in the same
room with coworkers but should not have coordination of work
activity.

12 Tr. 24 (emphasis added).

13 At step four, the ALJ found Plaintiff was capable of performing her past
14 relevant work as a housekeeping cleaner. Tr. 39-40.

15 At step five, the ALJ alternatively found that, based on the testimony of the
16 vocational expert, and considering Plaintiff's age, education, work experience, and
17 RFC, Plaintiff could perform jobs that existed in significant numbers in the
18 national economy, including the jobs of kitchen helper, day worker, and production
19 assembler. Tr. 40-42.

20 The ALJ thus concluded Plaintiff was not under a disability within the
21 meaning of the Social Security Act at any time from the alleged onset date, May 6,
22 2020, through the date of the decision, November 10, 2022. Tr. 42.

23 ISSUES

24 The question presented is whether substantial evidence supports the ALJ's
25 decision denying benefits and, if so, whether that decision is based on proper legal
26 standards.

27 Plaintiff asserts the ALJ erred (1) at step four because Plaintiff's past work
28 as a housekeeper does not constitute past relevant work under the Agency's

1 regulations; and (2) at step five because the ALJ’s conclusion that Plaintiff “could
2 not sustain work with detailed or complex instructions and steps” conflicts with the
3 General Educational Development Reasoning Level 2 jobs identified as work
4 Plaintiff could perform. ECF No. 12 at 2. Defendant does not dispute, and thus
5 concedes, that the ALJ erred at step four. *See* ECF No. 17. The admitted error at
6 step four does not change the result if step five was done correctly. Therefore,
7 only the ALJ’s alternative step five determination is at issue in this case.

8 **DISCUSSION**

9 Plaintiff argues the ALJ erred at step five because the ALJ’s determination
10 that Plaintiff could not sustain work with detailed or complex instructions, Tr. 33,
11 conflicted with the Reasoning Level 2 jobs identified by the vocational expert and
12 the ALJ as work Plaintiff could perform. ECF No. 12 at 7-12. Defendant counters
13 that Plaintiff has not demonstrated a conflict between the three identified jobs and
14 the functional limitations assessed by the ALJ. ECF No. 17 at 4-9.

15 At step five of the sequential evaluation process, the burden shifts to the ALJ
16 to identify jobs that exist in significant numbers in the national economy that the
17 claimant can perform. In making the step five determination, the ALJ “may
18 consult a series of sources including a [vocational expert] and the [Dictionary of
19 Occupational Titles (“DOT”)]. *Lamear v. Berryhill*, 865 F.3d 1201, 1205 (9th Cir.
20 2017); *see* Social Security Ruling (“SSR”) 00-4p, 2000 WL 1898704. “If the
21 [vocational] expert’s opinion that the applicant is able to work conflicts with, or
22 seems to conflict with, the requirements listed in the [DOT], then the ALJ must ask
23 the expert to reconcile the conflict before relying on the expert to decide if the
24 claimant is disabled.” *Gutierrez v. Colvin*, 844 F.3d 804, 807 (9th Cir. 2016);
25 *Massachi v. Astrue*, 486 F.3d 1149, 1152 (9th Cir. 2007) (“SSR 00-4p
26 unambiguously provides that ‘[w]hen a [vocational expert] . . . provides evidence
27 about the requirements of a job or occupation, the adjudicator has an affirmative
28 responsibility to ask about any possible conflict between that [vocational expert’s]

1 . . . evidence and information provided in the [DOT].’”). The ALJ has an
2 affirmative duty to resolve any obvious or apparent conflicts between the DOT and
3 the vocational expert’s testimony. *Lamear*, 365 F.3d at 1205; *Massachi*, 486 F.3d
4 at 1152-1153.

5 An “obvious or apparent” conflict exists where the vocational expert’s
6 testimony is “at odds with the [DOT’s] listing of job requirements that are
7 essential, integral, or expected.” *Gutierrez*, 844 F.3d at 808. Where such a
8 conflict exists, the ALJ may accept the vocational expert’s testimony that
9 contradicts the DOT only if the record contains “persuasive evidence to support the
10 deviation.” *Pinto v. Massanari*, 249 F.3d 840, 846 (9th Cir. 2001) (quoting
11 *Johnson v. Shalala*, 60 F.3d 1428, 1435 (9th Cir. 1995)). Without an explanation
12 from the ALJ addressing this conflict, courts cannot “determin[e] whether the
13 ALJ’s decision is supported by substantial evidence.” *Zavalin v. Colvin*, 778 F.3d
14 842, 846 (9th Cir. 2015).

15 Here, each of the three identified jobs – kitchen helper, day worker, and
16 production assembler – requires a Reasoning Level 2. *See* DOT 318.687-010;
17 DOT 301.687-014; DOT 706.687-010. Reasoning level 2 requires a person to be
18 able to do the following: “Apply commonsense understanding to carry out
19 **detailed but uninvolved** written or oral instructions. Deal with problems involving
20 a few concrete variables in or from standardized situations.” DOT, Appendix C,
21 Section III, 1991 WL 688702 (emphasis added).

22 The body of the ALJ’s decision indicates Plaintiff “could not sustain work
23 with detailed or complex instructions and steps,” Tr. 33, but the very next sentence
24 in the ALJ’s opinion states, “[h]owever, the medical evidence generally indicates
25 that the claimant could sustain simple and routine tasks.” The ALJ’s specific RFC
26 determination holds that Plaintiff is capable of performing “simple, routine tasks.”
27 Tr. 24. It is clear the ALJ concluded Plaintiff could not perform detailed or
28 complex work and was thus limited to simple, routine tasks.

1 The Ninth Circuit has held that simple work is consistent with positions
2 requiring Reasoning Level 2. *Davis v. Saul*, 846 Fed.Appx. 464, 466 (9th Cir.
3 2021); *Lara v. Astrue*, 305 Fed.Appx. 324, 326 (9th Cir. 2008) (finding “someone
4 able to perform simple, repetitive tasks is capable of doing work requiring more
5 rigor and sophistication-in other words, Reasoning Level 2 jobs”). It has been
6 specifically determined that a claimant’s limitation to “simple, routine tasks” is
7 consistent with the Reasoning Level 2 ability “to carry out detailed but
8 uncomplicated instructions and dealing with problems involving few variables.”
9 *Zavalin*, 778 F.3d at 847; *Cervantes v. O’Malley*, 2024 WL 1173827 at *4 (E.D.
10 Cal. Mar. 19, 2024) (“The Ninth Circuit has repeatedly indicated the ability to
11 perform ‘simple’ work corresponds with Reasoning Level 2 abilities.”); *Meissl v.*
12 *Barnhart*, 403 F.Supp.2d 981 (C.D. Cal. 2005) (finding no conflict between
13 limitation to simple/routine tasks and Reasoning Level 2 jobs). As stated by the
14 Ninth Circuit in a fairly recent unpublished opinion, an ability to “perform ‘simple
15 and routine work tasks’ . . . corresponds to Level 2 Reasoning and the ‘detailed but
16 uninvolved’ work it entails.” *Bradshaw v. Kijakazi*, 2022 WL 17500610 at *2 (9th
17 Cir. 2022).

18 The ALJ’s determination that Plaintiff could not sustain work with detailed
19 or complex instructions but was instead limited to simple, routine tasks does not
20 conflict with the ALJ’s ultimate conclusion that Plaintiff was able to perform the
21 Reasoning Level 2 “detailed but uninvolved” positions of kitchen helper, day
22 worker, and production assembler. The Court finds no error at step five; therefore,
23 Plaintiff is not entitled to a remand.

24 CONCLUSION

25 Having reviewed the record and the ALJ’s findings, the Court finds the
26 ALJ’s decision is supported by substantial evidence and free of legal error and is
27 affirmed. Accordingly, **IT IS HEREBY ORDERED:**

- 28 1. Defendant’s motion to affirm, **ECF No. 17**, is **GRANTED**.

2. Plaintiff's motion to reverse, **ECF No. 12**, is **DENIED**.

IT IS SO ORDERED. The District Court Executive shall file this Order and provide copies to counsel. **Judgment shall be entered for Defendant and the file shall be CLOSED.**

DATED June 3, 2025.



A handwritten signature in blue ink that reads "Alexander C. Ekstrom".

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE